

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**CITY OF HUNTINGTON WOODS, a
Michigan Municipal Corporation and
CITY OF PLEASANT RIDGE, a
Michigan Municipal Corporation,**

Supreme Court No. _____

Plaintiffs/Counter-Defendants/Appellants,

Court of Appeals No. 321414

-vs-

**Oakland County Circuit Court
No. 13-135842-CZ**

**CITY OF OAK PARK, a Michigan
Municipal Corporation, and 45th DISTRICT
COURT, a Division of the State of Michigan,
jointly and severally,**

Defendants/Counter-Plaintiffs/Appellees.

_____ /

NOTICE OF HEARING

PLAINTIFFS-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

CERTIFICATE OF SERVICE

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To: Clerk of the Court
Counsel of Record

PLEASE TAKE NOTICE that Plaintiffs-Appellants' Application for Leave to Appeal will
be brought on for hearing on Tuesday, August 25, 2015.

MARK GRANZOTTO, P.C.

/s/ Mark Granzotto

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Dated: July 23, 2015

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ORDER BEING APPEALED FROM AND RELIEF REQUESTED

Plaintiffs-Appellants, City of Huntington Woods and City of Pleasant Ridge, seek leave to appeal from the Michigan Court of Appeals decision dated June 11, 2015. A copy of that Opinion is attached as Exhibit G. That opinion affirmed a circuit court decision granting the defendants' motions for summary disposition.

Plaintiffs request that this Court grant leave to appeal to consider several important legal questions presented in this case. Alternatively, plaintiffs request that the Court summarily reverse the Court of Appeals June 11, 2015 decision and remand this matter to the Oakland County Circuit Court for further proceedings.

STATEMENT REGARDING QUESTIONS PRESENTED

- I. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER THE QUESTION OF WHETHER THE COURT OF APPEALS ERRED IN CONCLUDING THAT, UNDER THE STATUTORY SCHEME PERTAINING TO THE FUNDING OF DISTRICT COURTS OF THE THIRD CLASS, THE PLAINTIFF MUNICIPALITIES HAVE AN OBLIGATION TO FUND THE OPERATIONS OF THE 45TH DISTRICT COURT?

Plaintiffs-Appellants say “Yes”.

Defendants-Appellees say “No”.

- II. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER THE QUESTION OF WHETHER THE COURT OF APPEALS ERRED IN CONCLUDING AS A MATTER OF LAW THAT THE PARTIES DID NOT ENTER INTO A BINDING AGREEMENT FOR THE FUNDING OF THE 45TH DISTRICT COURT THAT SATISFIED THE REQUIREMENTS OF MCL 600.8104(3)?

Plaintiffs-Appellants say “Yes”.

Defendants-Appellees say “No”.

- III. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER THE QUESTION OF WHETHER THE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF MCL 600.8379, THE STATUTE THAT CALLS FOR A DIVISION OF THE FINES AND COSTS ASSESSED BY A DISTRICT COURT AMONG THE POLITICAL SUBDIVISIONS THAT COMPRISE THAT DISTRICT?

Plaintiffs-Appellants say “Yes”.

Defendants-Appellees say “No”.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

This case presents significant questions associated with the funding of district courts under the statutory scheme developed by the Michigan Legislature. To understand the facts of this case and the disputes between the parties, it is necessary to begin with that statutory background.

The Statutory Framework

The 1963 Michigan Constitution charged the Michigan Legislature with establishing a court or courts of limited jurisdiction. Const, 1963, art. 6, §26. The Legislature responded in 1968 by passing the District Court Act, MCL 600.8101 *et seq.* See *City of Center Line v 37th District Court*, 403 Mich 595, 600-601; 271 NW2d 526 (1979). Six years later, through the passage of PA 1974, No. 145, the Legislature created the 45th District Court, consisting of the cities of Huntington Woods, Oak Park and Pleasant Ridge as well as the Township of Royal Oak.¹ MCL 600.8123(4).

The 45th District Court is designated as a district of the third class. Under the District Court Act, a district of the third class “is a district consisting of one or more political subdivisions within a county in which each political subdivision comprising the district is responsible for maintaining, financing and operating the district court within its respective political subdivision except as otherwise provided in this act.” MCL 600.8103(3).

In a district of the third class made up of multiple governmental entities, the court is by statute required to sit in each city with a population above 3,250 and within any township with a population of over 12,000. MCL 600.8251(4). There is, however, a statutory exception to this

¹The court that the Legislature created in 1974 was at the time designated as the 45th-B district court. MCL 600.8123(4) was later amended and beginning July 1, 2012, the district court servicing Huntington Woods, Oak Park, Pleasant Ridge and Royal Oak Township was renamed the 45th District Court. For simplicity purposes, this brief will refer to the court in both its pre- and post-July 1, 2012 form as the 45th District Court.

requirement: “The court is not required to sit in any political subdivision if the governing body of that subdivision by resolution and the court agree that the court shall not sit in the political subdivision.” *Id.*

There are two provisions in the District Court Act that feature prominently in the funding issues presented in this case. The first of these provisions is MCL 600.8104. This provision introduces two synonymous terms, “district funding unit” and “district control unit.” In districts of the third class, these terms are defined as “the city or the township.” MCL 600.8104(1)(b).

MCL 600.8104(2) goes on to describe the financial responsibilities of the “district funding unit” or “district control unit” for the operation of the district court:

(2) Except as otherwise provided in this act, a district funding unit shall be responsible for maintaining, financing, and operating the court only within its political subdivision. In districts of the third class a political subdivision shall not be responsible for the expenses of maintaining, financing, or operating the district court, traffic bureau, or small claims division incurred in any other political subdivision except as provided by section 8621 and other provisions of this act.

MCL 600.8104(2).

Thus, MCL 600.8104(2) provides that “[e]xcept as otherwise provided in this act,” a district funding unit shall be responsible for financing the operation of the court “only within its political subdivision.” The second sentence of §8104(2) pertains specifically to districts of the third class and it makes clear that a municipality or township is *not* financially responsible for the operation of a district court housed in another political subdivision within the district, “except as provided by section 8621² and other provisions of this act.”

²As will be discussed later in this brief, the statute specifically referred in §8104(2), MCL600.8621, is a limited exception, calling for each city or township in a district of the third class to share in the cost of district court recorders and reporters.

One of these “other provisions” is the subsection that follows immediately thereafter, MCL 600.8104(3). That subsection provides that multiple “district funding units” may reach an agreement to share the expenses of funding a district court. That subsection provides:

(3) One or more district funding units within any district may agree among themselves to share any or all of the expenses of maintaining, financing, or operating the district court. To become effective such agreements must be approved by resolution adopted by the governing body of the respective political subdivisions entering into the agreement, and upon approval such agreements shall become effective and binding in accordance with, to the extent of, and for such period stated in that agreement.

MCL 600.8104(3).

MCL 600.8271 is the second statute that is significant with respect to the funding issues raised in this case. The first subsection of that statute states:

(1) The governing body of each district funding unit shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in that district. However, before a governing body of a district funding unit may appropriate a lump-sum budget, the chief judge of the judicial district shall submit to the governing body of the district funding unit a budget request in line-item form with appropriate detail. A court that receives a line-item budget shall not exceed a line-item appropriation or transfer funds between line items without the prior approval of the governing body. A court that receives a lump-sum budget shall not exceed that budget without the prior approval of the governing body.

MCL 600.8271(l).

A final statute of relevance to the issues presented here is MCL 600.8379, a statute that addresses the disposition of fines and costs assessed in a district court case. With respect to courts of the third class such as the 45th District Court, MCL 600.8379(1)(c) provides in relevant part:

(1) Fines and costs assessed in the district court shall be paid to the clerk of the court who shall appropriate them as follows:

* * *

(c) . . . In districts of the third class, all fines and costs, other than those imposed for the violation of a penal law of this state or ordered in a civil infraction action for the violation of a law of this state, shall be paid to the political subdivision whose law was violated, except that where fines and costs are assessed in a political subdivision other than the political subdivision whose law was violated, 2/3 shall be paid to the political subdivision where the guilty plea or civil infraction admission was entered or where the trial or civil infraction action hearing took place and the balance shall be paid to the political subdivision whose law was violated.

MCL 600.8379(1)(c).

Thus, MCL 600.8379(1)(c) provides the general rule that a political subdivision whose laws are violated is to receive 100% of the fines and costs imposed in a district court action. However, this general rule does not apply where a district court of the third class sits in another political subdivision. In that circumstance, 2/3 of the fines and costs imposed are to be remitted to the city or township where the court sits and the remaining 1/3 is to be paid to the political subdivision whose laws are violated.

The Factual Background

With the 1974 legislation creating the 45th District Court, the local municipal court systems that Huntington Woods and Pleasant Ridge had been operating under were abolished as of the end of that year and the 45th District Court would begin operating as of January 1, 1975. The first decision confronting these two municipalities with the formation of the new district court was whether they would elect to house a district court within their cities or whether they would exercise the option available under what is now MCL 600.8251(4) to agree by resolution that the court would sit elsewhere within the district.

In late 1974, the City Manager of Oak Park was sufficiently interested in having Huntington Woods and Pleasant Ridge agree to allow the new district court to sit only in Oak Park that he had

a draft resolution prepared for Huntington Woods and Pleasant Ridge to adopt, agreeing to allow the district court to sit only in Oak Park.

On December 10, 1974, Pleasant Ridge adopted a version of the Oak Park City Manager's draft resolution. A copy of that resolution is attached as Exhibit A. That resolution indicated that the representatives of Pleasant Ridge had conferred with the judges of the soon-to-be 45th District Court and that Pleasant Ridge and the court "agreed that the court location requirement of [MCL 600.8251(4)] shall be waived." Resolution (Exhibit A).

The Pleasant Ridge resolution further recorded that "the City of Pleasant Ridge will not incur any expenses in connection with the operation of the new district court and will receive one-third of all fines assessed which originate in the City of Pleasant Ridge." *Id.*

One week later, Huntington Woods adopted a similar resolution. A copy of Huntington Woods' December 17, 1974 resolution is attached as Exhibit B.

At the same time that Huntington Woods and Pleasant Ridge passed these resolutions allowing the 45th District Court to sit exclusively in Oak Park, the City of Oak Park undertook the role as the sole funding source for the 45th District Court. The obligation that Oak Park took on was reflected in a resolution adopted by its City Council several years later. A copy of that April 1983 resolution of the Oak Park City Council is attached as Exhibit C.

This April 1983 resolution was prompted by the fact that, due largely to the number of civil cases being remanded to the district court from the Oakland County Circuit Court, the financial burden on Oak Park of maintaining the 45th District Court was increasing. This 1983 resolution began, however, with an acknowledgment of the role that Oak Park had undertaken as the sole source of funding for that court:

WHEREAS, the City of Oak Park has operated as the district control unit for the 45-B District Court since January 1, 1975 pursuant to the provisions of Act No. 154 of the Public Acts of 1968, which provides that in district courts of the third class, the district control unit is responsible for maintaining, financing and operating the district court within its political subdivision, and

* * *

WHEREAS, since January 1, 1975 the City of Oak Park, as the district control unit for the 45-B District Court, has borne the total expense of operating said Court located within its municipal offices.

Resolution (Exhibit C), at 9.

This 1983 resolution called on Huntington Woods, Pleasant Ridge and Royal Oak Township to provide court facilities for the district court within their jurisdictions or, alternatively, “to enter into an agreement with the City of Oak Park to share all of the expenses of maintaining, financing and operating the 45-B District Court within the boundaries of . . . Oak Park.” *Id.*, at 11.

None of the other three governmental entities within the district accepted Oak Park’s proposal and Oak Park continued in the role it had assumed as of January 1, 1975 as the “district control unit” solely responsible for maintaining and financing the 45th District Court. Consistent with that role, over the entire history of the 45th District Court’s operation, the administrators of that court never came to Huntington Woods or Pleasant Ridge with a budget or seeking funding. And, with the exception of the 1983 Oak Park resolution requesting Huntington Woods and Pleasant Ridge to enter into an agreement to share district court expenses, Oak Park never sought funding for the court’s operation from Huntington Woods or Pleasant Ridge.

Beginning on July 1, 1995, Oak Park and the 45th District Court, without consultation with or notice to Huntington Woods or Pleasant Ridge, began a program of assessing additional amounts

on each civil infraction adjudicated in the 45th District Court. At that time, the 45th District Court authorized the assessment of an additional \$10 for each ticket. Half of that amount was designated to go to a court building fund, the other half to a court retiree health care fund.

This \$10 assessment applied to every case adjudicated in the 45th District Court, including those originating in Huntington Woods and Pleasant Ridge. However, rather than sharing the proceeds from this assessment under the 1/3-2/3 split called for by MCL 600.8379(1)(c), the 45th District Court remitted the entirety of this assessment to Oak Park. Thus, for the time period between 1995 and 2012, the 45th District Court kept separate records for each ticket issued in Huntington Woods and Pleasant Ridge. On each such ticket, the fines and costs associated with the ticket itself would be shared between Oak Park and the other two municipalities on the 2/3-1/3 basis called for by MCL 600.8379(1)(c). However, the entirety of the additional \$10.00 assessment imposed in each case would be remitted to Oak Park.

In April 2007, the Oak Park City Council voted to double this assessment on each ticket adjudicated in the 45th District Court, to \$20.00. It further voted to add \$100.00 in costs to certain misdemeanor convictions, with these proceeds being assigned to the court building fund.

In October 2011, the Oak Park City Council voted to increase these assessments yet again, adding \$40.00 to each ticket adjudicated in the 45th District Court, as well as imposing \$125.00 in costs for certain misdemeanor convictions. A copy of the minutes from the Oak Park City Council's approval of this 2011 increase is attached as Exhibit D.

Through 2012, 100% of the additional revenue generated from the assessments that were instituted in July 1995 was paid to Oak Park. However, in fiscal year 2013, the court began distributing the proceeds from these assessments in a manner consistent with the formula called for

by §8379(1)(c). Thus, during that year, the \$40.00 added in each case adjudicating a ticket issued in Huntington Woods and Pleasant Ridge and the \$125.00 in costs charged for certain misdemeanor convictions were shared between Oak Park and those two cities on a 2/3-1/3 basis.

In 2012, the State Court Administrative Office (SCAO) released a report concerning Court Costs Distributions in the 45th District Court arising out of these special assessments instituted in 1995. A copy of this SCAO report is Exhibit E. The SCAO report noted that the district court “distributed all of the court costs collected (under these special assessments) to the city of Oak Park instead of distributing one-third to the political subdivision whose ordinance was violated.” SCAO Report (Exhibit E), at 2.

The SCAO Report further calculated the amount of money that had been distributed to Oak Park in contravention of the distribution percentages provided in §8379(1)(c). The Report indicated that for the period 1996 through 2012, Huntington Woods should have received an additional \$251,021.93 based on the proceeds generated on its tickets and that Pleasant Ridge should have received an additional \$111,696.33. SCAO Report (Exhibit E), at 2.

On August 22, 2013, Huntington Woods and Pleasant Ridge (hereinafter: “plaintiffs”) filed suit in the Oakland County Circuit Court against Oak Park and the 45th District Court. In their complaint, the plaintiffs alleged, among other things, that the defendants had violated the statutory formula provided in §8379(1)(c) for distribution of the fines and costs imposed by a district court. The complaint further sought damages based on the amounts specified in the 2012 SCAO Report, \$251,021.93 for Huntington Woods and \$111,696.33 for Pleasant Ridge.³

³The fourth governmental unit within the district, Royal Oak Township, later instituted a separate suit of its own raising these same claims. That suit has been stayed pending the outcome of this case.

Oak Park filed a Counter-Complaint for Declaratory Judgment. In that pleading, Oak Park first sought a declaratory judgment decreeing that Huntington Woods and Pleasant Ridge had an independent obligation under Michigan law to contribute to the funding of the 45th District Court. Thus, Oak Park asserted that, quite apart from the amounts it was receiving based on 2/3 of the fines and costs imposed in cases originating in Huntington Woods and Pleasant Ridge, these two municipalities owed an independent obligation to fund the district court.

Oak Park also sought in its Counter-Complaint to recover the funds that had been remitted to Huntington Woods and Pleasant Ridge beginning in the fiscal year 2013 based on the additional assessments for the court building fund and court retiree health care fund. Oak Park asserted that these assessments were not subject to the distribution formula provided in §8379(1)(c) and as a result, Oak Park sought in its Counter-Complaint to recover these amounts.

On December 23, 2013, months before the discovery cut-off date set by the circuit court, Oak Park filed a motion for summary disposition. In that motion, Oak Park sought judgment as a matter of law both on the claims asserted by plaintiffs and also on the claims contained in its Counter-Complaint. As to the former, Oak Park argued that the additional assessment on each Huntington Woods and Pleasant Ridge ticket was not subject to the statutory 2/3-1/3 distribution because these were not “fines and costs” as used in §8379(1)(c). On that same rationale, Oak Park sought summary disposition on that portion of its counter-complaint requesting the return of the 1/3 of the building fund and health care assessments that had been paid to Huntington Woods and Pleasant Ridge beginning in fiscal year 2013.

As to the remaining issue raised in its counter-complaint, Oak Park argued in its motion for summary disposition that the circuit court should declare as a matter of law that Huntington Woods

and Pleasant Ridge had an independent obligation under Michigan law to fund the 45th District Court. This argument was predicated almost exclusively on MCL 600.8271(1), and its provision that “[t]he governing body of each district funding unit shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in that district.”

The other named defendant, 45th District Court, later joined in the relief being sought by Oak Park.

Plaintiffs responded to the defendants’ motions by arguing first that the additional assessments that Oak Park unilaterally imposed beginning in 1995 were covered by §8379(1)(c) and, as a result, defendants were not entitled to summary disposition on the claims alleged in plaintiffs’ complaint.

On the primary issue raised in Oak Park’s Counter-Complaint - whether the plaintiffs had an obligation to contribute financially to the operation of the 45th District Court - plaintiffs raised two arguments. First, plaintiffs contended that as political subdivisions in which the district court does not sit, they did not owe a statutory obligation to fund the 45th District Court under the relevant provisions of the District Court Act. Alternatively, plaintiffs argued that there was either an express or implied agreement that satisfied the requirements of §8104(3) under which the parties had agreed that Oak Park would be the sole funding source for the 45th District Court.

The circuit court held a hearing on defendants’ motions on February 12, 2014. At that hearing, the court ruled that, based on the what it described as the “clear” language of MCL 600.8104 and MCL 600.8271(1), all of the political subdivisions comprising the 45th District Court, including Huntington Woods and Pleasant Ridge, had a legal responsibility to fund that court. Tr. 2/12/14, at 10. The circuit court further concluded that defendants were entitled to judgment as a

matter of law on the issue raised in plaintiff's complaint because, in its view, the additional assessments on tickets issued in Huntington Woods and Pleasant Ridge that began in 1995 did not fall within the coverage of §8379(1)(c) because they were not "fines" or "costs" under that statute. Tr. 2/12/14, at 12-13.

The circuit court signed an order memorializing its oral ruling on April 3, 2014. A copy of that order is attached as Exhibit F. The final paragraph of that order noted that the circuit court had yet to address one remaining aspect of Oak Park's Counter-Complaint, the portion of that pleading requesting return of the revenues transferred to plaintiffs beginning in July 2012. As such, the circuit court's April 3, 2014 order was not a final order.

Plaintiffs applied for leave to appeal from the circuit court's April 3, 2014 order. On October 14, 2014, a panel of the Court of Appeals granted that application.

Following briefing and oral argument, the Court of Appeals issued a published decision on June 11, 2015, affirming the circuit court's rulings. Attached as Exhibit G is a copy of the Court of Appeals decision. The Court of Appeals rejected plaintiffs' argument that they were exempted from funding the 45th District Court on the basis of MCL 600.8104, the statute that expressly declares that a political subdivision in a district court of the third class is not responsible for the expenses of maintaining or operating a court that is located in another city or township. The Court of Appeals ruled:

Plaintiffs overlook the limiting introductory language at the beginning of § 8104(2), "except as otherwise provided in this act," and the similar language at the end of that subsection, which again specifies that the provisions of that subsection apply "except as provided by section 8621 and other provisions of this act."

Opinion (Exhibit G), at 10.

The Court of Appeals ruled that the “except as otherwise provided” language in §8104(2) meant that this provision’s limitation on the funding responsibilities of cities such as Huntington Woods and Pleasant Ridge, which do not have a district court sitting within their borders, had to give way to MCL 600.8271(1). Thus, the Court of Appeals ruled:

MCL 600.8271(1) states that the governing body of each district funding unit “shall annually appropriate ... funds for the operation of the district court in that district.” It is well established “that the term ‘may’ is permissive,’ ... as opposed to the term ‘shall,’ which is considered ‘mandatory.’ “ *Manuel v Gill*, 481 Mich. 637, 647; 753 NW2d 48 (2008). By using the mandatory term “shall,” instead of the permissive term “may,” MCL 600.8271(1) clearly requires each district funding unit to provide funding for the district court. Reading these provisions of the Revised Judicature Act together, in accordance with the doctrine of *in pari materia*, the statutory scheme clearly imposes on all district funding units in a third-class district a duty to provide financial support for the district court, regardless of which political subdivision the court is seated.

Opinion (Exhibit G), at 10.

The Court of Appeals further rejected plaintiffs’ argument that there was an agreement as to the financing of the district court that satisfied the requirements of §8104(3). The panel ruled that the resolutions passed by Huntington Woods and Pleasant Ridge in December 1994, may have reflected their agreement that they would have no obligation to finance the court, “but plaintiffs have not provided any evidence that Oak Park or the 45th District Court assented to these resolutions.” Opinion (Exhibit G), at 12.

Finally, on the issue raised in the plaintiffs’ complaint as to the defendants’ violation of the fractional formula called for by §8379(1)(c), the panel ruled that the assessments for court retirees’ health care and the court building fund did not qualify as “fines and costs” under that statute. Instead, the Court of Appeals ruled that these assessments were “fees.” In reaching this conclusion, the Court of Appeals relied exclusively on a single statute, MCL 600.4801, the text of which the

panel analyzed at considerable length:

Neither the building fund assessment nor the retiree healthcare fund assessment qualify as a “cost” within the definition of MCL 600.4801(a). The charge was not assessed or collected for the prosecution, adjudication, or processing of criminal offenses, civil infractions, or other violations. Moreover, we are not persuaded that the term “court costs” in § 4801(a) extends to money collected for a court building fund or court retiree healthcare fund . . . MCL 600.4801(a) is a single sentence consisting of a subject (the term “costs”), a linking verb (“means”), and a predicate nominative. The predicate nominative of the sentence is “any monetary amount,” followed by a series of modifiers. The first modifier is the subordinate clause, “that the court is authorized to assess and collect...” The object of the subordinate clause is the infinitive, “to assess and collect.” The infinitive is modified by a prepositional phrase that provides a specific list of purposes *for* assessing and collecting the money, namely the actions of “prosecution, adjudication, or processing,” which in turn are modified by the prepositional phrase giving a specific list of the objects of those three actions, “of criminal offenses, civil infractions, civil violations, and parking violations.” The list of included actions and corresponding objects being then complete, the sentence further modifies the list of actions and corresponding objects with the participial phrase, “including court costs, the cost of prosecution, and the cost of providing court-ordered legal assistance to the defendant.” “[I]t is a general rule of statutory, as well as grammatical, construction that a modifying clause is confined to the last antecedent unless a contrary intention appears.” *Dale v Beta-C, Inc*, 227 Mich.App 57, 69; 574 NW2d 697 (1997). Accordingly, the modifying clause “including court costs” pertains to the last antecedent, “for prosecution, adjudication, or processing of criminal offenses, civil infractions, civil violations, and parking violations.” “Court costs” is not a standalone item in the list of monetary charges or assessments that come within the definition of “costs.” Rather, “court costs” is an item included in the subset of costs relating to prosecution, adjudication, or the processing of criminal offenses, civil infractions, civil violations, and parking violations. Accordingly, only court costs assessed and collected for those purposes are included in the statutory definition of “costs” in MCL 600.4801(a).

Therefore, monies assessed and collected for the building fund and the retiree healthcare fund are not “costs” under MCL 600.4801(a). Such assessments come within the statutory definition of “fee,” which is defined as “any monetary amount, other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction,....” MCL 600.4801(b). Because a “fee” is not part of the allocation required by MCL 600.8379(1)(c), neither Oak Park nor the 45th District Court was required to distribute one-third of the assessment to plaintiffs.

Id., at 13.

ARGUMENT

I. THIS COURT SHOULD GRANT LEAVE TO APPEAL TO CONSIDER WHETHER THE COURT OF APPEALS ERRED IN CONCLUDING THAT EVERY CITY OR TOWNSHIP THAT IS WITHIN A DISTRICT COURT OF THE THIRD CLASS HAS A STATUTORY OBLIGATION TO FUND THE OPERATIONS OF A DISTRICT COURT EVEN WHERE THAT COURT IS LOCATED IN ANOTHER POLITICAL SUBDIVISION WITHIN THAT DISTRICT.

This is an important case. The Court of Appeals published decision presents the significant question as to which cities or townships comprising a district court of the third class have a statutory obligation to provide the funds necessary for the operation of that district court. This case comes before the Court with a statutory backdrop that is both complex and confusing. What can be said with assurance is that there are subtleties associated with the relevant statutory scheme that did not attract the full attention of the Court of Appeals.

The Court of Appeals viewed the central funding question presented in this case as the defendants did, as a relatively simple resolution of two competing statutory provisions. The first of these statutes is MCL 600.8104(2), which provides:

(2) Except as otherwise provided in this act, a district funding unit shall be responsible for maintaining, financing, and operating the court only within its political subdivision. In districts of the third class a political subdivision shall not be responsible for the expenses of maintaining, financing, or operating the district court, traffic bureau, or small claims division incurred in any other political subdivision except as provided by section 8621 and other provisions of this act.

MCL 600.8104(2).

The second sentence of §8104(2) is directly addressed to district courts of the third class and the general rule that it establishes is explicit: where such a district is composed of multiple political subdivisions, each such subdivision *shall* not be responsible “for the expenses of maintaining,

financing or operating the district court” where that district court is located in another city or township.

The 45th District Court sits only in Oak Park. It does so because in 1974 Huntington Woods and Pleasant Ridge, with the consent of the district court, exercised the option available under MCL 600.8251(4) to waive the statutory requirement that the district court sit in those two cities. Thus, under the general rule of district court financing imbedded in §8104(2), Huntington Woods and Pleasant Ridge have no financial obligation to fund the operations of the 45th District Court.

This is the *general* rule provided for district courts of the third class in the second sentence of §8104(2). That sentence, however, ends with the following qualification: “except as provided by section 8621 and other provisions of this act.” The Court of Appeals ruled in its June 11, 2015 opinion that there was another statutory section that imposed on Huntington Woods and Pleasant Ridge an obligation to fund the 45th District Court despite the dictates of §8104(2)’s second sentence. That statute is MCL 600.8271(1), which provides:

(1) The governing body of each district funding unit shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in that district. However, before a governing body of a district funding unit may appropriate a lump-sum budget, the chief judge of the judicial district shall submit to the governing body of the district funding unit a budget request in line-item form with appropriate detail. A court that receives a line-item budget shall not exceed a line-item appropriation or transfer funds between line items without the prior approval of the governing body. A court that receives a lump-sum budget shall not exceed that budget without the prior approval of the governing body.

MCL 600.8271(1).

Focusing on the first sentence of §8271(1), the Court of Appeals ruled that, regardless of the limitations on plaintiffs’ obligations to fund the district court imposed in §8104(2), §8271(1)

requires every political subdivision within a district the obligation to fund the district court. There are a number of significant flaws in the Court of Appeals analysis of these two competing statutes.

I.

The Court of Appeals acknowledged the impact of the general rule set out in the second sentence of §8104(2): “Under subsection (2), plaintiffs are not responsible for the expenses of maintaining, financing, or operating the 45th District Court in Oak Park . . .” Opinion (Exhibit G), at 7. The Court of Appeals, however, viewed §8271(1) as an exception to the general rule expressed in the second sentence of §8104(2), based on the final clause of that statute, “except as provided by . . . other provisions of this act.”

What is initially dissatisfying about the Court of Appeals analysis of these two statutes is that §8271(1) as read by the Court of Appeals, is not an *exception* to the general rule set out in §8104(2), it is a complete *obliteration* of that general rule. The rather simple fact is that, if §8271(1) is read as expansively as the Court of Appeals read it, the general rule stated in the second sentence of §8104(2) will never be applicable.

The Court of Appeals opinion actually conveys this point very well. After acknowledging that under the general rule expressed in the second sentence of §8104(2), “plaintiffs are not responsible for the expenses of maintaining, financing, or operating the 45th District Court in Oak Park,” the Court of Appeals completed its examination of the impact of §8271(1) by concluding that “the statutory scheme clearly imposes on all district funding units in a third-class district a duty to provide financial support for the district court, regardless of which political subdivision the court is seated.” Opinion (Exhibit G), at 10.

MCL 600.8104(2)'s second sentence states the general rule that in district courts of the third class, a political subdivision shall *never* be responsible for the financing of a district court that sits outside its boundaries. But, if the Court of Appeals reading of §8271(1) were correct, the end result of the decision in this case is that a political subdivision will *always* be responsible for funding a district court located outside its boundaries.⁴

This Court has recently observed that in interpreting statutes, a court “operate[s] on the presumption that the Legislature did not intend to do a useless thing.” *People v Cunningham*, 496 Mich 145, 157; 852 NW2d 118 (2014). If the Court of Appeals analysis of the interplay between §8104(2) and §8271(1) were correct, the Michigan Legislature was indeed engaged in a useless act when it passed the former statute providing that a city or township *shall* not be responsible for the financing of a district court located outside its boundaries.

What is also confounding about the Court of Appeals finding of such a broad “exception” to §8104(2) in §8271(1) is that the second sentence of §8104(2), the sentence that applies specifically to districts of the third class, actually identifies one specific statutory exception to its coverage. That exception is MCL 600.8621, which provides:

⁴In its June 11, 2015 opinion, the Court of Appeals invoked the doctrine of *in pari materia* to justify its conclusion as to the interplay between §8104(2) and §8271(1). This is, to say the least, a curious use of this concept. This doctrine dictates that the Court “will regard all statutes upon the same subject matter as part of one system.” *International Business Machines Corp v Dept of Treasury*, 496 Mich 642, 651; 852 NW2d 865 (2014). This Court has further held that statutes *in pari materia* “although in apparent conflict, should so far as reasonably possible, be construed in harmony with each other, *so as to give force and effect to each.*” *Id.* (emphasis added); *Rathbun v State of Michigan*, 284 Mich 521, 544; 280 NW 35 (1938). The Court of Appeals took precisely the opposite approach in its opinion in this case. It took a Michigan statute written in mandatory language - a political subdivision *shall* not be responsible for funding a district court situated outside its borders - and it rendered that statute totally without effect. This is not the manner in which statutes *in pari materia* are to be interpreted.

(1) District court recorders and reporters shall be paid by each district control unit. In districts consisting of more than 1 district control unit, each district control unit shall contribute to the salary in the same proportion as the number of cases entered and commenced in the district control unit bears to the number of cases entered and commenced in the district, as determined by the judges of the district court under rules prescribed by the supreme court.

MCL 600.8621(1).

Several observations concerning this statutory exception to §8104(2) are in order. First, it is a relative narrow exception to the general rule as stated in the second sentence of §8104(2). This exception applies only to the costs of court reporters or recorders.

A second point worth noting about this statute is that it comes with a delineation of how the costs of recorders and reporters are to be shared among the cities or townships that comprise a district court of the third class. According to §8621(1), Huntington Woods, Pleasant Ridge and Oak Park are to share in the expenses associated with court reporters or court recorders on the basis of the proportion of cases arising in each city. There is no such provision as to how expenses are to be shared in the statute that the Court of Appeals relied on, §8271(1).

But, the most important question to be posed concerning §8104(2)'s specific reference to §8621(1) is this: in light of the Court of Appeals expansive reading of §8271(1), why did this reference to §8621 need to be included in §8104(2) at all? If, as the Court of Appeals ruled, §8271(1) calls for the sharing of *all* costs of a district court among each of the political subdivisions within a district regardless of where the court might sit, there was no reason for §8621 to even be mentioned in the second sentence of §8104(2). If the Court of Appeals' interpretation of §8271(1) were correct, *all* expenses associated with a district court's operations - including those associated with court reporters or court recorders - would have to be shared anyway. In other words, if the

Court of Appeals were correct in finding a broad exception to §8104(2) in §8271(1), the reference to §8621 in the former statute would be completely superfluous. It is, of course, well established that courts must avoid an interpretation of a statute “that renders nugatory or surplusage any part of a statute.” *Hannay v Dept. of Transportation*, 497 Mich 45,57; 860 NW2d 67 (2014); *Auto Owners Ins. Co. v All Star Lawn Specialists Plus, Inc.*, 497 Mich 13, 19; 857 NW2d 520 (2014).

II.

There is an even more serious textual problem created by the Court of Appeals ruling in this case. In examining the interrelationship between §8104 and §8271(1), the Court of Appeals focused solely on the language in §8104(2). It completely omitted from its analysis the import of §8104(3). That statute specifies:

(3) One or more district funding units within any district may agree among themselves to share any or all of the expenses of maintaining, financing, or operating the district court. To become effective such agreements must be approved by resolution adopted by the governing body of the respective political subdivisions entering into the agreement, and upon approval such agreements shall become effective and binding in accordance with, to the extent of, and for such period stated in that agreement.

MCL 600.8104(3).

MCL 600.8104(3) specifies the circumstances in which the funding units within a district can agree to share any or all of the expenses associated with the operation of a district court. The statute is explicit, if there is to be a sharing in the financing of a district court, there must be an agreement approved by resolution adopted by each of the political subdivisions within that district.

The defendants in this case have taken two positions that are, in light of the text of §8104(3), incompatible. Defendants have first argued that there is no agreement between the parties that

satisfies §8104(3) for the sharing of the financial responsibility for the 45th District Court.⁵ The defendants were ultimately successful in convincing the Court of Appeals on this point; it held that there was no evidence of such an agreement. Opinion (Exhibit G), at 11-12. Yet, at the same time that the defendants have denied the existence of an agreement to share the costs of financing the district court, *they have claimed the right to share such costs under another statute, §8271(1).*

But, properly read, §8104(3) provides the only circumstances under which the costs of a district court of the third class can be shared. And, unlike §8104(2), this subsection describing the circumstances in which political subdivisions can agree to share district court financial responsibilities does not allow for exceptions contained in other sections of the act; §8104(3) does *not* provide that its provisions apply “except as otherwise provided in this act.”

MCL 600.8104(3) provides the circumstances in which political subdivisions within a district can agree to share expenses. In the absence of such an agreement, there can be no sharing of expenses. The language of §8104(3) cannot be harmonized with the Court of Appeals interpretation of §8271(1).

A court confronted with two statutes such as §8104(3) and §8271(1) is constrained to construe these provisions in a harmonious fashion. *International Business Machines Corp v Dept of Treasury*, 496 Mich 642, 651; 852 NW2d 865 (2014); *Wayne County Prosecutor v Dept of*

⁵Plaintiffs have taken issue with the defendants’ contention that there was no agreement as to how the financial obligation for the operation of the 45th District Court would be shared. Plaintiffs argued below and will argue in Issue II, *infra*, that a factual issue remains on whether the parties did, in fact, reach an agreement that Oak Park would have full responsibility for the funding of the district court. It is the defendants who have insisted that no agreement complying with §8104(3) exists.

Corrections, 451 Mich 569, 577; 548 NW2d 900 (1996).⁶ It was inappropriate for the Court of Appeals to construe §8271(1) as an independent ground for the sharing of district court finances between political subdivisions in the 45th District Court when §8104(3) provides that such sharing is to take place only where the governmental entities involved have agreed upon a system of sharing these financial responsibilities under §8104(3).

Thus, the appropriate way to read these two provisions in a harmonious manner is that the duties imposed in §8271(1) - the district court's chief judge's obligation to submit a budget request to the governing body of each political subdivision and the duty of each district funding unit to appropriate a line-item or lump-sum budget only apply in a court such as the 45th District Court *where there is an agreement among each funding unit to share the financial responsibility for the district court under §8104(3)*.

One of the great ironies in this case is that it can safely be said that there are two entities who at one point in time shared this view as to how the funding provisions of the District Court Act should be interpreted. These two entities happened to be the two defendants in this case. Beginning as early as January 1975, Oak Park assumed the obligation to be the sole source of funding for the district court. Moreover, in 1983, Oak Park did what it could do to invoke §8104(3); it drafted a resolution inviting Huntington Woods and Pleasant Ridge to enter into an agreement to share the financial responsibilities for the 45th District Court. *See* Resolution (Exhibit C). Huntington Woods and Pleasant Ridge did not accept this invitation and Oak Park remained the sole funding source for the district court. It was not until the filing of its Counter-Complaint in this case that Oak Park took

⁶It should be noted that the same Public Act that created §8271(1) in its present form also amended §8104(3). *See* PA 1996, No. 374.

the view that the District Court Act imposed an affirmative obligation on Huntington Woods and Pleasant Ridge to fund the district court's operations. For its part, the 45th District Court exhibited its understanding of how district court funding operated under applicable Michigan statutes by the fact that it *never* presented a budget to the governing bodies of Huntington Woods and Pleasant Ridge in the 40 year existence of that court as required by §8271(1).

III.

There is further support for this view of the interplay between §8104(3) and §8271(1) in an important consideration that happens to be missing from the District Court Act. The defendants and the Court of Appeals took the position that Oak Park, Huntington Woods and Pleasant Ridge can be compelled under the provisions of the District Court Act to share financial support for the 45th District Court even in the absence of an express agreement between these entities as to how precisely that support is to be shared. Plaintiffs, on the other hand, have argued that the Michigan Legislature did not intend for cities or townships that do not house the district court to share in the financial support of that court unless they do so by express agreement under §8104(3).

But, if the Court of Appeals and defendants were correct and a sharing of the financial responsibilities for the district court may be imposed on Huntington Woods and Pleasant Ridge by statute, what is completely missing from the District Court Act is any indication as to how these financial responsibilities are to be shared. One would assume that if the Michigan Legislature had intended to impose a sharing of district court expenses on cities such as Huntington Woods and Pleasant Ridge, the Legislature would have seen fit to provide some basis for how these expenses were to be allocated. The fact that there is no such provision in the District Court Act is yet another

indication that the Legislature did *not* intend to impose such a sharing of district court funding responsibilities in the absence of an express agreement between the cities and townships involved.

Tellingly, prior to 1970, when §8104 was amended to what is basically its present form, that statute did in fact provide a formula for the sharing of district court expenses. In its pre-1970 form, §8104 read:

In districts consisting of more than 1 district control unit each district control unit shall contribute to the expenses of the court, except as otherwise provided by this act, in the same proportion as the population of the district control unit bears to the population of all district control units within the district. Commencing January 1, 1970 in districts consisting of more than 1 district control unit, each district control unit shall contribute to the expenses of the court, except as otherwise provided by this act, in the same proportion as the number of cases entered and commenced in the district control unit bears to the number of cases entered and commenced in the district.

Thus, in this earlier version of §8104, funding responsibilities were allocated between political subdivisions according to specified proportions. However, this legislatively-prescribed method for allocating district court expenses was removed when the Legislature amended §8104 in 1970 and it was replaced with what is now §8104(2) and (3). As noted previously, these two subsections in their present form lay out the general rule that cities like Huntington Woods and Pleasant Ridge, where the district court does not sit, are not responsible for district court funding unless they enter into an express agreement undertaking funding responsibilities.

The fact that there is no longer a legislatively mandated basis for the sharing of district court expenses provides yet another indication that the Michigan Legislature did not intend §8271(1) to serve as an independent basis for imposing funding responsibilities on cities such as Huntington Woods and Pleasant Ridge that do not serve as sites for a district court.

The defendants have attempted to make up for this significant legislative omission by relying on a court rule, MCR 8.201. That court rule provides that four times per year the clerk of a district court of the third class is to determine the total number of cases filed in the district and the total number of cases from each political subdivision within the district. MCR 8.201(A)(1). The clerk is then to determine “the total cost of maintaining, financing and operating the district court within the district.” MCR 8.201(A)(2). After the clerk makes these calculations, MCR 8.201(A)(3) provides:

(3) The clerk shall determine the proper share of the costs to be borne by each political subdivision by use of the following formula: (the number of cases entered and commenced in each political subdivision divided by the total number of cases entered and commenced in the district) multiplied by the total cost of maintaining, financing, and operating the district court.

The defendants have argued throughout this case that the allocation of funding responsibility prescribed in MCR 8.201(A) is binding.⁷ This argument as to the impact of MCR 8.201(A) presents a substantial question of constitutional concern that is, in and of itself, worthy of this Court’s review.

Const 1963, art 6, §5 provides this Court with the exclusive constitutional authority to enact court rules governing “practice and procedure” in the courts. As this Court recognized in *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999), this rule-making power is circumscribed by the constitutional authority vested in the coordinate branches of Michigan’s government. In

⁷While perhaps subject to some debate, the circuit court appears to have adopted defendants’ argument to use MCR 8.201(A) to fill in the statutory gaps with respect to the allocation of funding responsibilities. In its April 3, 2014 order granting summary disposition, the circuit court indicated that the presentation of a budget by the 45th District Court’s Chief Judge is a requirement for an annual appropriation from each political subdivision within the 45th District Court. Order (Exhibit F), at 2. That order further provides that the “Chief Judge line item budget . . . shall be in accord with MCR 8.201(A).” *Id.* Presumably, this language was meant to incorporate the financial apportionment called for by MCR 8.201(A)(3).

McDougall, this Court recognized a distinction between “‘practice and procedure’ and substantive law.”

The *McDougall* case came before the Court on the basis of a conflict between a Michigan Rule of Evidence and a statute governing the admission of evidence. *See also People v Watkins*, 491 Mich 450; 818 NW2d 296 (2012). The argument that defendants have raised in this case with respect to the allocation of district court funding responsibilities in MCR 8.201(A) presents an even more fundamental question - whether the creation of a court rule presenting a formula for the sharing of district court funding responsibilities can be considered to be within the Court’s constitutional authority to govern “practice and procedure” in the courts.⁸

Rules of court are not exempt from constitutional challenge. *Wolodzko v Wayne Circuit Judge*, 382 Mich 528, 531; 170 NW2d 9 (1969). And, if a court rule exceeds this court’s rule-making authority to govern practice and procedure in the courts, that court rule must be struck down. For example, in *People v Gross*, 464 Mich 266; 627 NW2d 261 (2001), this Court reversed a prior Supreme Court ruling and court rules implementing that ruling which had afforded a right to preliminary examination for a defendant charged by means of an indictment. The Court found in

⁸It is worth noting that, when what is now MCR 8.201 was originally promulgated by this Court, there may have been no constitutional difficulties presented by that rule. This is because, prior to 1970, MCL 600.8104 indicated that the funding of district courts of the third class was to be done in accordance with the percentages now contained in MCR 8.201 “under rules prescribed by the supreme court.” Thus, prior to the 1970 amendment of MCL 600.8104, this Court had been delegated the authority to enact a court rule governing district court funding. What is now MCR 8.201 was taken from an earlier district court rule, D.C. Rule 4003, which was apparently enacted under the authority granted by the pre-1970 version of MCL 600.8104. That authority, however, was removed from §8104 in 1970. As noted previously, that statute no longer has any provision as to how the expenses of a district court are to be apportioned among political subdivisions and it contains no further delegation to this Court to use its rule-making authority on this subject.

Gross that “[t]he entitlement of a right to a preliminary examination is more than a matter of procedure and beyond the powers vested in the Court by Const. 1963, Art 6, §5, it is a matter of public policy for the legislative branch.” 464 Mich at 282-283; *cf In Re Kasuba Estate*, 401 Mich 560, 566; 258 NW2d 731 (1977) (recognizing that the jurisdiction of probate courts is governed by statute and “our power to make rules of practice and procedure cannot be used to expand that jurisdiction without legislative consent.”).

What defendants have successfully argued in this case is that the allocation of funding responsibilities among political subdivisions that comprise a district court of the third class is to be controlled by a court rule. The District Court Act makes clear that the funding of district courts is a matter of legislative concern. Similarly, the allocation of those funding responsibilities represents a matter of public policy that is beyond this Court’s constitutional rule-making authority to govern practice and procedures in the courts.

To summarize, the fact that the District Court Act is completely silent on the allocation of financial responsibility for the funding of district courts of the third class provides yet another reason to reject the Court of Appeals determination that §8271(1) provides a complete exception to the funding responsibilities outlined in §8104(2). If §8271(1) did, in fact, obliterate §8104(2)’s limitation on the funding responsibilities of governmental entities within a district where the court does not sit, it stands to reason that the legislature would prescribe some explicit method by which these financial responsibilities would be allocated. The fact that there is no such legislative allocation suggests that the Court of Appeals reading of §8271(1) does not equate with what the Michigan Legislature intended.

But if this significant gap in the legislative scheme is, as defendants have contended in this case, to be filled by reference to a Michigan court rule, this represents yet another reason why this Court must take up the merits of this case. This Court must address whether a court rule addressing district court funding responsibilities for the cities and townships within that district is within the constitutional authority granted this Court under art. 6, §5 of the Michigan Constitution.

IV.

Finally, some consideration has to be given to the statute that formed the basis for the plaintiffs' original claim, §8379. It is that statute that provides for a transfer of resources between cities such as Huntington Woods and Pleasant Ridge, which do not have a district court sitting within their boundaries, and the city where the court sits, Oak Park. Under §8379(1)(c), 2/3 of all fines and costs assessed on tickets issued in Huntington Woods and Pleasant Ridge go directly to Oak Park which, under the general rule provided in §8104(2), is the district funding unit responsible for all of the expenses of maintaining the district court that is located within it.

In their briefs to both the circuit court and the Court of Appeals, defendants have resorted to overheated and unnecessary rhetoric suggesting that plaintiffs had shirked all of their statutory responsibilities to fund the 45th District Court. In point of fact, for the past 40 years, Oak Park - the city that is solely responsible for maintaining and operating the 45th District Court under the general rule expressed in the second sentence of §8104(2) - has been the recipient of hundreds of thousands of dollars based on its 2/3 share of fines and costs collected on tickets issued in Huntington Woods and Pleasant Ridge.

The serious question presented in this case is whether §8379(1)(c)'s allocation to Oak Park of a sizeable percentage of the fines and costs assessed on tickets issued in Huntington Woods and

Pleasant Ridge was designed by the Michigan legislature to represent *the* sole funding obligation that these two cities, which otherwise have no funding responsibilities under either §8104(2) or §8104(3), owe for the operation of the district court.

The Court of Appeals ruled otherwise on the basis of its conclusion that §8271(1) represents a statutory exception to or an obliteration of the general rule provided in §8104(2). But the system that this ruling leaves in place means first that Oak Park would maintain the statutory benefit provided in §8379(1)(c) and it would recover 2/3 of every fine and cost collected on tickets issued in Huntington Woods and Pleasant Ridge. Meanwhile, under the Court of Appeals ruling, Huntington Woods and Pleasant Ridge would be independently required to “appropriate by line-item or lump-sum budget funds for the operation of the district court.” MCL 600.8271(1).

Taking the defendants’ position further, Huntington Woods and Pleasant Ridge, after statutorily relinquishing 2/3 of all fines and costs assessed on tickets issued within their jurisdictions, would be duty bound under §8271(1) to appropriate funds for the operation of the district court and, pursuant to MCR 8.201(A)(3), they would be further called upon to bear the costs of the entire district court operation in a percentage equal to the percentage of cases emanating from those two cities.

It is somewhat difficult to imagine that the Michigan Legislature intended such a potential financial bonanza for a city like Oak Park. It is more logical to conclude that §8379(1)(c) was designed to dovetail with the general rule with respect to district court funding expressed in §8104(2). In that subsection, the Legislature recognized that, where a district was composed of multiple political subdivisions and the district court was located in only one of these subdivisions, the other cities and townships (absent an express agreement to the contrary) would have no direct

financial responsibility for the district court's operations. To make up for that fact, the Legislature passed §8379, which guaranteed the municipality housing the district court a significant percentage of the revenue generated by the enforcement of the laws of those other political subdivisions.

V.

The district court funding issues presented in this case are far more complex than the Court of Appeals June 11, 2015 opinion made them out to be. Both the importance of the legal issue and the complexity of the statutory scheme render this a case that calls for full review by this Court.

II. THIS COURT SHOULD GRANT LEAVE TO APPEAL TO CONSIDER WHETHER FACTUAL ISSUES REMAINED ON THE QUESTION OF WHETHER THE PARTIES REACHED AN AGREEMENT FOR THE ALLOCATION OF THE EXPENSES OF THE 45TH DISTRICT COURT.

As noted previously, §8104(3) allows the cities or townships within a district of the third class to enter into an agreement to share the cost of funding a district court. Plaintiffs argued below that such an agreement existed. They contended that when the 45th District Court was established in 1975, the four political subdivisions within the district reached agreement on three points: (1) the district court would sit only in Oak Park; (2) Oak Park would be the sole direct funding source for the district court's operations; and (3) Huntington Woods' and Pleasant Ridge's financial contribution to the court's operation would be confined to the allocation of fines and costs called for by §8379(1)(c).

MCL 600.8104(3) requires that to be effective, an agreement to share in the financial support for a district court, must be "adopted by the governing body of the respective political subdivisions." In support of their position that such an agreement existed, plaintiffs presented in response to defendants' motions for summary disposition resolutions of both the Huntington Woods City

Council and the Pleasant Ridge City Council that were passed in December 1974, on the eve of the opening of the 45th District Court. *See* Exhibits A and B.

The Court of Appeals ruled in its June 11, 2015 opinion that these resolutions did not create an issue of fact as to the existence of an enforceable funding agreement under §8104(3). The Court of Appeals ruled that “[p]laintiffs’ resolutions state that they ‘will not incur any expense in connection with the operation of the new District Court,’ but plaintiffs have not provided any evidence that Oak Park or the 45th District Court assented to these resolutions.” Opinion (Exhibit G), at 12.

First, it would appear the Court of Appeals misread §8104(3) in suggesting that the 45th District Court would have to pass some sort of “resolution” to create an enforceable district court funding agreement. MCL 600.8104(3) contains no such requirement. That statute requires that a resolution be passed by all involved “political subdivisions” within the district, but it does not also require the agreement of the district court.

Thus, the question for purposes of plaintiffs’ argument predicated on §8104(3) is whether there was ever a resolution passed by the Oak Park City Council expressing agreement with plaintiffs’ contention that Oak Park was to be the sole source of funding for the 45th District Court.

In moving for summary disposition, neither Oak Park nor the 45th District Court offered proof as to whether or not such a resolution was ever passed. In their motion, Oak Park offered the general statement that “[t]he parties have not entered into an agreement to address the allocation of court *expenses* or court revenue.” Brief in Support of Motion, at 2 (emphasis in original). But, Oak Park did not address §8104(3) in its motion nor did it provide evidence that Oak Park never resolved to undertake full responsibility for funding the 45th District Court.

But, one of the exhibits attached to Oak Park's motion certainly provided support for plaintiffs' contention that the parties had reached an accord as to how the financial responsibilities for the district court would be divided. Oak Park pointed out in its motion that in 1983 it invoked §8104(3) by passing a resolution calling on Huntington Woods and Pleasant Ridge to share in the costs of the 45th District Court's operation.

The 1983 Oak Park resolution contained several introductory paragraphs that fully supported plaintiffs' position that the parties had in fact reached an agreement as to how the district court would be funded. The 1983 resolution indicated in relevant part:

WHEREAS, the City of Oak Park has operated as *the* district control unit for the 45-B District Court since January 1, 1975 pursuant to the provisions of Act No. 154 of the Public Acts of 1968, which provides that in district courts of the third class, the district control unit is responsible for maintaining, financing and operating the district court within its political subdivision, and

* * *

WHEREAS, since January 1, 1975 the City of Oak Park, as *the* district control unit for the 45-B District Court, has borne the total expense of operating said Court located within its municipal offices.

Resolution (Exhibit C), at 9 (emphasis added).

The 1983 resolution passed by the Oak Park City Council indicated that since the 45th District Court was created in January 1975, Oak Park had assumed the role of *the* "district control unit . . . responsible for maintaining, financing and operating the district court . . ." and in that role, Oak Park "has borne the total expenses of operating said court." *Id.*

This statement funding responsibility assumed by Oak Park coincides completely with Huntington Woods' and Pleasant Ridge's understanding of the financial obligations of the parties

as expressed in the resolutions that they passed in December 1974 just prior to the formation of the 45th District Court.

In the course of its June 11, 2015 opinion, the Court of Appeals discussed the contents of this 1983 Oak Park resolution. It found that “the 1983 resolution . . . clearly indicates that there was no agreement between the communities.” Opinion (Exhibit G), at 11. In light of the fact that courts at the summary disposition stage are compelled to construe all of the evidence and the reasonable inferences derived from that evidence in the light most favorable to the non-moving party, *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999), the Court of Appeals reached precisely the wrong conclusion based on the 1983 Oak Park resolution. The fact is that the paragraphs from that resolution cited above confirm that Huntington Woods, Pleasant Ridge and Oak Park had a mutual understanding as to how the 45th District Court would be financed. In other words, the evidence before the circuit court supported the view that there was total agreement as to how the 45th District Court would be financed between the political subdivisions within the district, but by 1983 one of the political subdivisions involved no longer liked that agreement.

The Court of Appeals further indicated that Oak Park had countered plaintiffs’ argument based on §8104(3) by asserting that “a search of its records for the years 1974 and 1975 revealed no record of a resolution or agreement pertaining to the funding and the operation of the 45-B District Court.” Opinion (Exhibit G), at 11. Quite apart from the fact that this statement as to what Oak Park was unable to locate in 1974 and 1975 does not erase the significance of the 1983 resolution discussed above, the fact is that Oak Park’s assertion in its appellate brief as to its inability to find a resolution was little more than an announcement; Oak Park presented no evidence to support the assertion that no such resolution existed.

Contrary to the Court of Appeals' ruling, construed in the light most favorable to plaintiffs, there was no basis to conclude that defendants were entitled to summary disposition on plaintiffs' claim that an agreement existed between the parties pertaining to the funding of the 45th District Court. Based on the contents of the 1983 Oak Park resolution and based on the complete lack of evidence as to the existence or nonexistence of a resolution passed by Oak Park, it was error for the Court of Appeals to conclude as a matter of law that plaintiffs could make no claim to an enforceable funding agreement under §8104(3).

III. THE COURT SHOULD GRANT LEAVE TO APPEAL TO CONSIDER WHETHER THE COURT OF APPEALS ERRED IN CONCLUDING THAT OAK PARK DID NOT VIOLATE MCL 600.8379.

MCL 600.8379 governs the distribution of post-conviction assessments imposed by a district court. In a district court of the third class such as the 45th District Court, §8379(1)(c) mandates that where "fines and costs" are assessed in a court sitting in a political subdivision other than the city or township whose laws were violated, 2/3 of the fines or costs collected are to be disbursed to the city or township where the court sits and the remaining 1/3 to the political subdivision whose law was violated.

Beginning in 1995, Oak Park and the 45th District Court violated §8379. That year, the district court began imposing additional costs on each ticket that the 45th District Court processed. Defendants, however, did not share these additional assessments under the 2/3 - 1/3 split called for by §8379(1)(c). Instead, on tickets issued in Huntington Woods and Pleasant Ridge, the district court paid the entirety of these assessments to Oak Park. Huntington Woods and Pleasant Ridge instituted this action to enforce §8379(1)(c) as they sued to recover the amount of underpayments identified in the 2012 SCAO Report. *See* Exhibit E.

In response to that claim, Oak Park and the 45th District Court offered the defense that the amounts that were added to each Huntington Woods or Pleasant Ridge ticket processed through the 45th District Court did not represent a “fine” or “cost” as used in §8379. Instead, the defendants asserted that these assessments were something completely different - a fee.

The subtle distinction that defendants offered in response to plaintiff’s claim was rendered slightly implausible by the fact that in a 2011 resolution of the Oak Park City Council increasing these assessments, that body referred to these added assessments as “costs” no less than ten times.⁹ See Exhibit D. In any event, the defendants succeeded in convincing both the circuit court and the Court of Appeals that the additional amounts tacked on to Huntington Woods or Pleasant Ridge tickets was a “fee” that was not covered by §8379.

In its June 11, 2015 decision, the Court of Appeals rested its ruling as to the reach of §8379 entirely on another Michigan statute, MCL 600.4801. Opinion (Exhibit G), at 13-16. According to the panel, that statute provided the relevant definitions of the terms “costs” and “fees.” *Id.*, at 13. The Court of Appeals was wrong in reaching this result.

MCL 600.4801 is a definitional section that provides in relevant part:

As used in this chapter

(a) “Costs” means any monetary amount that the court is authorized to assess and collect for prosecution, adjudication, or processing of criminal offenses, civil infractions, civil violations, and parking violations, including court costs, the cost of prosecution, and the cost of providing court-ordered legal assistance to the defendant.

⁹This same Oak Park resolution also four times used the word “fees” to describe these additional assessments. This means that the body responsible for imposing these assessments viewed the terms “costs” and “fees” as interchangeable, a far more common-sense position than that taken by Oak Park’s lawyers in this case.

(b) “Fee” means any monetary amount, other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction, finding of responsibility, or other adjudication of a criminal offense, a civil infraction, a civil violation, or a parking violation, including a driver license reinstatement fee.

(c) “Penalty” includes fines, forfeitures, and forfeited recognizance.

Id.

In reaching the conclusion that the assessments that began being added to Huntington Woods and Pleasant Ridge tickets in 1995 were fees and not costs, the Court of Appeals engaged in extensive analysis of the text of §4801. Opinion (Exhibit G), at 13. Yet somehow in that extended parsing of this statutory language, the Court of Appeals overlooked the first five words of that statute. MCL 600.4801 begins with this limitation as to its scope: “As used in this chapter.” These first five words of §4801 are significant. MCL 600.4801 is a provision in Chapter 48 of the Revised Judicature Act (RJA). By §4801's express language, the definitions that are provided in that statute pertain only to the provisions of Chapter 48 of the RJA.

The district courts are the subject of Chapters 81 through 88 of the RJA. More specifically, §8379, the statute that formed the basis for plaintiffs’ complaint, is contained in Chapter 83 of the RJA. The Court of Appeals proceeded on the assumption that §4801's definitions were dispositive in construing language contained in Chapter 83 of the R.J.A. That assumption was wrong. *See Klooster v City of Charlevoix*, 488 Mich 289, 305; 795 NW2d 578 (2011); *Covington Park Homes Condominium Ass’n v Federal National Mortgage Ass’n*, 298 Mich App 252, 261-262; 827 NW2d 379 (2012).

The logical place to begin any examination into whether the additional assessments for ordinance violations imposed by the 45th District Court represent fines or costs or fees is the District

Court Act and specifically §8379 itself. There is no definition of the terms “fines,” “costs” or “fees” in Chapter 83 of the RJA or in the District Court Act as a whole. There are, however, certain logical deductions that can be made on the basis of the language in the pertinent provisions.

Turning first to §8379 itself, the “fines and costs” that it refers to are obviously part of the sentence imposed for an ordinance violation or misdemeanor conviction rendered in a district court. It is also noteworthy that §8379(1)(c) was meant to be all-encompassing, it specifies that the fractional distribution called for by that subsection is meant to apply to *all* fines and costs imposed by a district court other than those that arise out of a violation of state law.

What is also readily apparent with a little bit of research is that the title of the defendants would give these contested assessments - fees - means something fundamentally different when the District Court Act is considered as a whole. In Chapters 81 through 88 of the RJA, the chapters that apply to district courts, the word “fee” appears in 19 different statutory sections.¹⁰ What is clear from an examination of these 19 provisions is that the word “fee,” when it is used in the District Court Act, never encompasses a component of the sanction imposed on a party following conviction of an ordinance violation or misdemeanor.

For example, the District Court Act mentions a filing *fee* for civil actions brought in district court, MCL 600.8306; MCL 600.8322(8); MCL 600.8371; MCL 600.8381(3); MCL 600.8425(2); it also addresses witness *fees*, MCL 600.8719(3); MCL 600.8721(3); MCL 600.8819(3); MCL 600.8821(3); the act authorizes a *fee* for performing a marriage ceremony, MCL 600.8316, and it

¹⁰These nineteen sections are MCL 600.8306, MCL 600.8316, MCL 600.8322, MCL 600.8323, MCL 600.8326, MCL 600.8371, MCL 600.8381, MCL 600.8420, MCL 600.8423, MCL 600.8425, MCL 600.8513, MCL 600.8631, MCL 600.8719, MCL 600.8721, MCL 600.8725, MCL 600.8819, MCL 600.8821, MCL 600.8825 and MCL 600.8827.

allows for a mileage *fee* for certain travel associated with court business, MCL 600.8322(5), MCL 600.8323, MCL 600.8326. The act also provides for a motion *fee*, MCL 600.8371(10), a *fee* for the filing of an affidavit of commencement, MCL 600.8420, or a transmittal *fee* where a counterclaim is filed in excess of the court's jurisdictional limit, MCL 600.8423. The act addresses a waiver of court *fees* for an indigent in a civil action, MCL 600.8513(2)(b), as well as court reporter *fees*, MCL 600.8631. Finally, the act calls for a drivers license reinstatement *fee*, MCL 600.8327(8)(b), and it prohibits local officials for accepting a *fee* for issuing citations. MCL 600.8725, MCL 600.8825.

What this review demonstrates is that there is not a single statute in the District Court Act in which the word "fee" is used to describe some or all of the penalty that may imposed on an individual for a violation of local law. MCL 600.8379(1)(c) is obviously a statute addressed to the penalties that may be imposed - "fines and costs" - on an individual found responsible for an ordinance violation. Viewing the District Court Act as a whole, it is impossible to come to the conclusion that the added assessments imposed by the 45th District Court could be classified as "fees" and, on that basis, exempted from the distribution called for by §8379(1).

Finally, the classification of these additional assessments that the defendants imposed for court retiree health benefits and the court building improvement fund should also take into account recent statutory changes that took place in the wake of this Court's decision in *People v Cunningham*, 496 Mich 145; 852 NW2d 118 (2014). In *Cunningham*, this Court considered MCL 769.1k, the statute that provides for the imposition of fines and costs following a conviction. The Court ruled in *Cunningham* that this statute did not provide courts with an independent authority to impose any type of cost. Instead, the Court ruled that the statute "provides courts with the authority

to impose only those costs that the Legislature has separately authorized by statute.” 496 Mich at 154.

Apparently, the *Cunningham* decision caused quite a stir. Very shortly after that decision was issued, the Michigan Legislature reacted to its holding. Within four months of the release of *Cunningham*, the Legislature amended MCL 761.1k to plug any holes in a trial court’s authority to impose costs following a conviction.

One of the changes to MCL 769.1k is of particular importance here. After *Cunningham* required specific legislative authorization for the imposition of a post-conviction cost, the following language was added to MCL 769.1k:

(b) The court may impose any or all of the following:

* * *

(iii) Until 36 months after the date the amendatory act that added subsection (7) is enacted into law, any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

(A) *Salaries and benefits for relevant court personnel.*

(B) Goods and services necessary for the operation of the court.

(C) *Necessary expenses for the operation and maintenance of court buildings and facilities.*

MCL 760.1k(1)(b) (emphasis added).

What is significant about MCL 769.1k in its amended form is that the Legislature has, in response to *Cunningham*, specifically identified as appropriate *costs* a post-conviction assessment for the salaries or benefits of court personnel as well as assessments for the operation and maintenance of court buildings. That is precisely what the additional assessments that the 45th

District Court instituted in 1995 were for, health benefits for retired court employees and the court building fund.

The recent amendment of MCL 769.1k(1)(b) provides further confirmation of the fact that these additional assessments imposed by the defendants since 1995 meet the definition of “fines and costs” for purposes of §8379(1)(c). On that basis, summary disposition was inappropriate on plaintiffs’ claim for damages.

The Court of Appeals erroneous interpretation of the reach of §8379(1)(c) represents another reason why leave to appeal should be granted in this case.

RELIEF REQUESTED

Based on the foregoing, plaintiffs-appellants, the City of Huntington Woods and the City of Pleasant Ridge, respectfully request that this Court grant their application for leave to appeal and give full consideration to the important issues presented in this case. In the alternative, plaintiffs request that the Court summarily reverse the Court of Appeals June 11, 2015 decision and remand this matter to the Oakland County Circuit Court for further proceedings.

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